

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
KENNETH ORLANDO SPARKS,
Defendant.

Case No. [21-cr-00281-VC-1](#)

**ORDER RE JURY INSTRUCTION
FOR COUNT 3**

Re: Dkt. No. 189

The following draft instruction for Enticement of a Minor (Count 3) does not fully address the concerns expressed by the Court this morning, but the parties may wish to use it as a starting point for discussions:

The defendant is charged in Count 3 with enticing a minor to commit sexual activity in violation of California Penal Code § 311.3. For the defendant to be found guilty of that charge the government must prove beyond a reasonable doubt:

- (1) the defendant used a means of interstate commerce, that is, the internet, to knowingly persuade, induce, or entice Ms. Garcia to engage in sexual activity;
- (2) the defendant could have been charged for that sexual activity with a criminal offense under California Penal Code § 311.3. Under California Penal Code § 311.3, it is a criminal offense to knowingly exchange any image, knowing that the image depicts a person under the age of 18 years old engaged in defecation or urination for the purpose of sexual stimulation of the viewer;
- (3) Ms. Garcia was under the age of 18 years old; and
- (4) the defendant knew Ms. Garcia was under the age of 18 years old.

IT IS SO ORDERED.

Dated: March 14, 2023

A handwritten signature in black ink, appearing to read 'Vince', is positioned above a horizontal line.

VINCE CHHABRIA
United States District Judge